

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

M.D., ET AL.,)	CASE NO: 2:11-CV-0084
)	
Plaintiffs,)	CIVIL
)	
vs.)	Corpus Christi, Texas
)	
GOVERNOR RICK PERRY, ET AL.,)	Friday, December 12, 2014
)	(10:34 a.m. to 12:01 p.m.)
<u>Defendants.</u>)	

CROSS EXAMINATION OF JOHN SPECIA
DURING TRIAL - DAY 10

BEFORE THE HONORABLE JANIS GRAHAM JACK,
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Angel Mireles / Arlene Rodriguez
Case Manager:	Arlene Rodriguez / Linda Smith
Transcriber:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

APPEARANCES FOR:

Plaintiffs:

R. PAUL YETTER, ESQ.
Yetter, Coleman, LLP
909 Fannin, Suite 3600
Houston, TX 77010

SARAH BARTOSZ, ESQ.
Children's Rights
330 Seventh Avenue
Fourth Floor
New York, NY 10001

Defendants:

THOMAS A. ALBRIGHT, ESQ.
Office of the Attorney General
General Litigation Division
P. O. Box 12548
Capital Station
Austin, TX 78711-2548

INDEX

<u>DEFENDANTS' WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JOHN SPECIA		4		
<u>PLAINTIFFS' EXHIBITS</u>				<u>RECEIVED</u>
1988				58
1966				67

Corpus Christi, Texas; Friday, December 12, 2014; 10:34 a.m.

(Partial transcript; Cross Examination of John Specia)

THE COURT: Go ahead, Mr. Yetter.

MR. YETTER: I'm making a mess --

(Pause)

THE COURT: That took another three minutes.

(Laughter)

CROSS EXAMINATION

BY MR. YETTER:

Q Good morning, Commissioner, Paul Yetter. We have never met but -- oh, we may have met actually during the --

A I think we've met somewhere along the line.

Q Yes, I think we -- yes, we did, we actually met and I apologize.

So I'd like to cover a number of topics and I'm going to try to be as efficient as I can be, try to be as clear as I can be, and you can be as concise as hopefully you can be as well.

A I will try to do that.

Q Now you are commissioner of the DFPS today. You happen to be the seventh commissioner of the department since 2004.

Did you realize that?

A That does not surprise me. I hadn't counted them all out.

Q All right. Let's go back --

A I've known them all but, yeah, I'm sure that's true.

1 Q I want to quickly go -- 10 years ago in 2004, Thomas
2 Chapman was the commissioner.

3 You knew Thomas Chapman or you at least knew of him,
4 didn't you?

5 A Yes.

6 Q And he resigned because there was a -- shortly after a
7 report about deficiencies in the Adult Protective Services
8 Program came out.

9 Do you recall that?

10 A No.

11 Q Two thousand four, Ben Delgado was put in as the interim.
12 He was only there for a brief time.

13 Do you remember Ben Delgado?

14 A No.

15 Q Cary Cockrell (phonetic) was there for three years, from
16 2005 to 2007.

17 Do you remember Commissioner Cockrell?

18 A Yes, I do.

19 Q And he was -- he retired shortly after the department took
20 all the children from the El Dorado Ranch of the Fundamentalist
21 LDS group.

22 Do you recall that?

23 A Yes.

24 Q And in 2008 Ben Delgado came back.

25 Do you remember that time?

1 A I don't know Ben Delgado.

2 Q From 2008 to 2011, it was Ann Haligensteen (phonetic).

3 Do you remember that?

4 A Yes.

5 Q And after three years she quit in a surprise retirement,
6 did she not?

7 A Yes.

8 Q She was pushing for reform. She was the one that started
9 foster care redesign?

10 A Yes.

11 Q Then Howard Baldwin was there for a little less than a
12 year. He was a lawyer out of the AG's office, was he not?

13 A Actually, he was retired and he had taken over the
14 insurance agency for the state. He was not -- and he ran the
15 child support division at some point in the past but I don't
16 think he was with the AG's office.

17 Q He was at one time. He resigned just weeks after that
18 scandal with that little girl Tameron Claphee (phonetic) in
19 Abilene, Region Two, remember that?

20 A Yes.

21 Q And now you were appointed to succeed Howard Baldwin and
22 you have just finished and congratulations on just finishing
23 the second year.

24 A Yes.

25 Q So of the last six commissioners none of them lasted

1 longer than three years.

2 Did you know that?

3 A I thought it was four? Didn't you say that Cary Cockrell
4 was there four?

5 Q Cary Cockrell --

6 A Or Ann, one or the other?

7 Q -- I think he was there for three but maybe he was there
8 for four.

9 A Okay.

10 Q Now you have a -- you have a big organization, 12,000
11 employees, do you not?

12 A Yes.

13 Q Of that group, 8,000, two-thirds, are in the Child
14 Protective Services area I think you've testified?

15 A Yes.

16 Q It is -- it is a state run system if you know what I'm
17 talking about?

18 A Yes.

19 Q That means all the handbook and the policies and the rules
20 come out of the DFPS chief offices in Austin, don't they?

21 A Yes.

22 Q You have one handbook for all 11 regions around the state,
23 do you not?

24 A Yes.

25 Q You have one technology system evidently called Impact for

1 all 11 regions around the state, do you not?

2 A Yes.

3 Q All the counties are subject to the same handbook, and
4 policies, and rules, true?

5 A Yes.

6 Q All the counties are subject to the same reporting systems
7 and common technology system, right?

8 A The regions are. There's no separate reporting from
9 counties but the regions are.

10 Q All the counties within the regions --

11 A Sure.

12 Q -- have to do the same reporting.

13 You said your budget was 2.6 billion --

14 A Yes.

15 Q -- in the last -- I just want to make it clear. That's a
16 two year budget?

17 A Oh, yes, absolutely.

18 Q So it's 1.3 billion per year, right?

19 A Yes.

20 Q Now among every organization that you've ever worked in
21 has its own culture does it not, Commissioner?

22 A Say that again?

23 Q Every organization you've ever been involved in has its
24 own culture --

25 A Yes.

1 Q -- does it not? And if you wanted to have a good well
2 working child welfare system you'd want it to always be acting
3 in the best interests of children, wouldn't you?

4 A Yes.

5 Q In other words, put politics, put internal scuffles, that
6 sort of thing, set it to the side and always make decisions in
7 the best interest of the children?

8 A Yes.

9 Q Make sure you don't ignore problems?

10 A Sure.

11 Q Make sure you don't hide any crisis, true?

12 A Yes.

13 Q Avoid making excuses?

14 A Correct.

15 Q Now I want to talk about some of the -- what I believe
16 might well be a crisis, at least some of it, and that has to do
17 with this system that we have in our state is very largely
18 privatized, isn't it?

19 A Yes.

20 Q And the Court's heard all the details. Foster care
21 redesign is a step to even add another layer of privatization
22 to our system that is already very largely privatized, isn't
23 it?

24 A It is another layer but I believe it increases
25 accountability.

1 Q I'm not going to argue about what it does but basically
2 you're putting another set of private providers to do the
3 management of that bigger subset of private providers, true?

4 A Yes.

5 Q Okay. Now the -- one of the problems that we have in our
6 state that the Department has had for some period of time is
7 that it has not been much of an enforcer of its rules and
8 policies, has it?

9 A I'm going to have to have specific examples of that.

10 Q Sure. I'm going to say -- I'm going to ask you this.

11 It's taken a very cautious approach to enforcing
12 instances -- a violation of abuse and neglect in violation of
13 its standards, hasn't it, cautious?

14 A Deliberate perhaps, okay.

15 Q Okay. I used the word "cautious." There are a lot of
16 things that the Department can do when one of these private
17 providers either allows a child to be abused or neglected or
18 violates standards? There's a number of different actions this
19 department can take, can't it?

20 A Yes.

21 Q One of the actions called Voluntary Actions by an
22 Operation is basically the department saying to the private
23 agency, "Please fix this problem yourself," right?

24 A I'm not aware of that one.

25 Q Okay. Then we also can have a monetary action. You can

1 penalize them an amount of money, true?

2 A Yes.

3 Q And then you can have a corrective action which is
4 basically saying, "I'm warning you. You have to do X, Y, or
5 there's going to be bad consequences."

6 A That's correct.

7 Q And then you could have actually something that has real
8 teeth to it called an Adverse Action which means, "I'm taking
9 your permit away. I'm revoking it. I'm not going to let you
10 have a permit or I'm going to suspend your permit"?

11 A Yes.

12 Q That's an adverse action. And the problem -- the reason I
13 said "cautious" is because the Department, whenever one of
14 these private providers is found, actually found, to have
15 allowed abuse and neglect to happen to a child victim, the
16 Department almost never takes an adverse action against the
17 private provider, does it?

18 A Give me some specifics on that one.

19 Q I'll give you a very specific one, so.

20 **THE COURT:** Well, for instance, I asked your
21 licensing department if they'd ever revoked a license and since
22 -- and since 2010, one has been revoked and that was where
23 there were several --

24 **MR. YETTER:** Four deaths.

25 **THE COURT:** Four deaths --

1 **THE WITNESS:** Okay.

2 **THE COURT:** -- and that was Daystar.

3 **MR. YETTER:** Correct.

4 **THE COURT:** And that's the only one that's ever been
5 revoked in that period of time from what I understood from the
6 testimony.

7 **MR. YETTER:** Sunset, it -- that's exactly right, your
8 Honor.

9 **BY MR. YETTER:**

10 Q Sunset looked at this issue, did it not, Commissioner?

11 A Yes.

12 Q And let's go to Defendant's Exhibit Number 119. This is
13 the Sunset Commission report four months ago, August of 2014,
14 and let's go to page 90, and let's go to the bottom box in the
15 corner.

16 Commissioner, you've seen this before. I know the
17 Sunset report is very important to you but here it is in fiscal
18 year 2013, this is when -- this is the -- this was from 2012 to
19 2013, right, Commissioner?

20 A That's what it says.

21 Q And then CCL, that is Child Care Licensing, true?

22 A Yes.

23 Q So that involves both daycare and residential care. The
24 day -- the residential care will be for the foster children,
25 true?

1 A Yes.

2 Q Okay. There's 10,000 facilities all across our state --

3 A Can I see the --

4 **THE COURT:** What, sir?

5 **THE WITNESS:** What does the footnote say on it, at
6 the top?

7 **MR. YETTER:** Let's see.

8 **THE COURT:** Four.

9 **MR. YETTER:** Footnote Four -- good question. I don't
10 actually know what Footnote Four says on that.

11 **THE COURT:** It probably explains what the fiscal year
12 is but --

13 Q So fiscal year for you would be --

14 **THE COURT:** Do you -- do you have that on an exhibit?

15 **MR. YETTER:** It's on another page, your Honor, and I
16 don't have that page right handy.

17 **THE WITNESS:** That's okay. I'm just -- I'd like to
18 know what the footnote is but okay.

19 **MR. YETTER:** I think it must have to do with that
20 fiscal year. That would be September 1, 2012 to August 31,
21 2013.

22 **THE WITNESS:** Okay.

23 **BY MR. YETTER:**

24 Q Residential child care: 10,000 regulated facilities.
25 That would be family -- foster family homes, foster group

1 homes, RTCs, other GROs, correct?

2 A Yes.

3 Q All across our state, 10,286. During that entire 12
4 months you had 4,000 inspections.

5 We heard a lot of testimony about people that go out
6 and inspect, right?

7 A Yes.

8 Q You had 5,160 investigations. Now that could be an
9 investigation of abuse and neglect or an investigation of
10 nonabuse and neglect, true?

11 A Yes.

12 Q So we know because we got the statistics from the
13 licensing people that there were almost exactly 2,000 abuse and
14 neglect investigations in fiscal year 2013.

15 Do you remember that testimony --

16 A Yes.

17 Q -- from Jean Shaw?

18 So there must have been about 3,000 nonabuse or
19 standard investigations, if you do the math.

20 Does that sound about right? If there were 2,000
21 abuse investigations --

22 A I'll trust your math.

23 Q Okay. So you have standard violations, 6,000 standard
24 violations.

25 Now the next two boxes I want to focus on:

1 Corrective actions, just to remind the Court, that's their
2 warning, you better do something different or something really
3 bad is going to happen to you, right?

4 A Yes.

5 Q Out of 10,000 facilities across our state, 12 months, 11
6 regions, plus Harris County, 12 corrective actions by the
7 Department -- this is in the Sunset Commission Report, right?

8 A Yes.

9 Q And adverse actions. That's the one that has teeth.
10 That's says, "I'm denying your permit. I'm revoking your
11 permit. I'm suspending your permit."

12 How many in that 12 months, Commissioner, did the
13 state have?

14 A This document says one.

15 Q You don't doubt the accuracy of the Sunset Commission
16 Report, do you?

17 A No, I do not.

18 Q Okay. The problem with that -- this is it creates repeat
19 violators, doesn't it, Commissioner?

20 A I'm not sure that you could draw that conclusion from
21 this.

22 Q Okay. Well, the Sunset Commission did.

23 A Okay.

24 Q Let's go to page 92 and blow up the top paragraph. Okay.
25 One -- Repeat Violations.

1 Do you remember this section now?

2 A Yes.

3 Q One consequence of a more relaxed regulatory environment
4 and that's what they were calling Texas, right?

5 A Yes.

6 Q A relaxed regulatory environment -- can be seen in a high
7 incident -- incidence of repeat violations that can result when
8 regulated entities perceive that they will be not held
9 accountable for ignoring the state's requirements.

10 That's a bad thing, isn't it, Commissioner?

11 A Yes.

12 Q One of the things, going down, not to read all but to kind
13 of just cut to the chase --

14 A And --

15 Q -- one of the things they say here is most of the repeat
16 violations occurred on the highest risk standards.

17 That's a very bad thing, isn't it?

18 A On mostly associated with criminal history check
19 requirements. That is a problem that we're addressing in this
20 LAR, the --

21 Q That's a terrible thing, isn't it?

22 A Most of the repeat --

23 Q You could have people with criminal records that no one's
24 checking on --

25 A That's not --

1 Q -- and then you don't penalize them and they do it again,
2 and again, and again.

3 A Okay. That's not true.

4 Q Okay. Now --

5 A Can I explain that?

6 **THE COURT:** Yes.

7 **THE WITNESS:** We have -- this is a problem because of
8 the way we capture this data. We have almost, as I believe,
9 about 100 percent compliance on checking criminal backgrounds
10 when people start at a facility. There's a requirement to do
11 it yearly. Where the violations are occurring is people aren't
12 hitting that year. It may be 11 months. It may be 12 months.
13 We monitor this. We get penalized by the federal government
14 for this. So we are completely changing the way this is going
15 to happen and I've got part of my LAR on that specifically. I
16 consider that to be a high risk violation but it's focused on
17 criminal history checks and we were -- we've got the solution
18 on that one.

19 **BY MR. YETTER**

20 Q Okay. You know that criminal history check, that's a
21 standard, isn't it, that's a standard? You've got to do that.
22 You've got to follow that rule, true?

23 A Most of these repeat violations occur on the highest risk
24 standard mostly associated with criminal history check
25 requirements.

1 Q Okay. But we also have instances of abuse and neglect,
2 don't we?

3 A We may but that sentence --

4 Q Commissioner -- just a minute, Commissioner.

5 A -- talks primarily about --

6 Q Let's take this instance off. Let's go back to page 90
7 and blow up that box, 90 at the bottom.

8 That box of adverse actions of one in an entire 12
9 months. It doesn't just cover standards violations, does it?

10 A I don't think so.

11 Q No. It covers instances where you actually do validate
12 that there's abuse and neglect of a poor child, true?

13 A I don't know what that adverse action was for so I don't
14 know.

15 Q Okay. "Now the problem is going slow on enforcing
16 regulations designed to protect children from safety risks out
17 of concern that some providers may have trouble meeting such
18 protective standards is essentially to accept a level of risk
19 to children simply because the state needs providers regardless
20 of their quality," true?

21 A May I see the quote, please?

22 Q Well, sure, page 99. Here's the findings. Let's blow up
23 -- if we blow up the title real quick and a little bit farther
24 down, the next one, there you go.

25 "Cautious approach to enforcement." It's in the

1 second paragraph underneath that; that paragraph right there,
2 the second sentence. However -- we can read the first one.

3 "The desire for a lighter enforcement hand may stem
4 from concerns that a strong enforcement approach could harm
5 child care providers and ultimately affect the affordability of
6 daycare and the availability of foster care for abused and
7 neglected children. However, to go slow in enforcing
8 regulations designed to protect children from safety risks out
9 of concern that some providers may have trouble meeting such
10 protective standards is essentially to accept a level of risk
11 to children simply because the state needs providers regardless
12 of their quality."

13 Did I read that correctly?

14 A This -- the focus of -- yes, you did. The focus on this
15 --

16 Q Do you agree with that statement, Commissioner?

17 A I agree with the statement and --

18 Q Okay.

19 A -- it focuses on child care providers. The vast majority
20 of those are child care providers, day care centers, and I also
21 agreed with this and we're going to change this but my response
22 to --

23 Q Commissioner, I'm really going to try to be efficient and
24 I'm going to ask you questions as best as I can yes or no. I
25 know you've got lots of explanations but we have a limited time

1 together and I'm going to try to move through some things.

2 Okay?

3 A I just want to see what you're asking me.

4 Q Sure, I have no problem with that.

5 Now, I talked about a crisis. Obviously if you've
6 only given one adverse action over an entire 12 months
7 something's not working right, is it?

8 A I think we need to be better at enforcement. I also know
9 that many facilities close down.

10 Q Something is -- something's not working right, is it,
11 Commissioner?

12 A We are going to address that issue and we are going to do
13 what Sunset told us to do.

14 Q Now one of the things that is not working right is that
15 the investigative arm of the State of Texas almost never
16 substantiates a claim of abuse and neglect; isn't that true?

17 A I saw those statistics and I understand what those
18 statistics are.

19 Q And were they shocking to you that in the last two fiscal
20 years the State of Texas validated, substantiated, somewhere
21 between three and four percent of all of the abuse and neglect
22 reports in our state? Did that shock you?

23 A Okay. It doesn't shock me until I look at what the other
24 states are doing and review the information. It is an issue --

25 **THE COURT:** What are the other states doing?

1 **THE WITNESS:** I don't know. I will -- your Honor,
2 I've learned things here and I'm going to go back and take a
3 look at that. That's an issue I want to look at, what the
4 other states do, and I want to look at the UTD category. That
5 was an issue raised in Sunset for the investigations. That's
6 an issue I need to look at.

7 **THE COURT:** I guess it's surprising. I mean surely
8 you've had those statistics for some time.

9 **THE WITNESS:** Your Honor, I have truckloads of
10 statistics.

11 **THE COURT:** But this is a very important statistic.

12 **THE WITNESS:** And I understand that completely.

13 **THE COURT:** To not substantiate a right to believe,
14 whatever that acronym is --

15 **MR. YETTER:** RTB.

16 **THE COURT:** -- just a report made by an attorney who
17 -- an eyewitness, and never even to listen to her, ask her
18 about it, is just absolutely stunning to me and that such a low
19 percentage is just not -- and all we heard was from one of the
20 state's witnesses that that was a very low number.

21 **BY MR. YETTER:**

22 Q And she was concerned by it. You heard Pat Wilson
23 yesterday say it concerned her, true?

24 A I'm concerned and --

25 Q Okay.

1 A -- I'm going to look into the matter and I'm going to look
2 specifically into the Levelland matter.

3 Q Now there's nothing in your LAR about the fact -- what you
4 sent to the legislator -- about the fact that the state
5 validates a tiny fraction of all reported abuse and neglect
6 against children in our foster care system, is there?

7 A I don't think so.

8 Q Okay. Now you also saw and I suspect you were shocked
9 that the rank and file when we saw them in the investigative
10 group thinks that without -- with no autopsy, no RTB, -- do you
11 remember that?

12 A There was one worker in 2010.

13 Q And you --

14 A So it's one person said that.

15 Q And you don't give that much credence?

16 A That's an e-mail from one worker.

17 Q Now were you shocked --

18 **THE COURT:** Well, actually it turned out to be true.

19 **THE WITNESS:** Well, okay.

20 **THE COURT:** I'm sorry. Since 2010, that is true.

21 The only thing ever closed down was because of four deaths in
22 one place. So the point she was making was made to me also and
23 very serious.

24 //

25 //

1 Q Now weren't you also concerned when you saw some of your
2 executives that are not in the licensing group debating
3 internally about whether findings by the licensing group in
4 child deaths actually should be RTB fatal?

5 Weren't you concerned about that?

6 A I want to make sure that every RTB finding --

7 Q Well, were you concerned about it?

8 A I -- the --

9 Q That these nonlicensing people are debating --

10 A The discussion --

11 Q -- about whether it should RTB fatal where these children
12 died in the hands of their caregivers or RTB nonfatal.

13 Weren't you kind of concerned, like what are they
14 doing in there?

15 A They were discussing how to determine whether it was the
16 right -- it was RTB either way and we count it as an RTB.

17 Q Well, RTB fatals are a big deal.

18 A Did the RTB cause the death --

19 **THE COURT:** Wait a minute, let him finish.

20 **THE WITNESS:** Did the RTB cause --

21 **MR. YETTER:** Sorry, sorry.

22 **THE COURT:** Stop it. Just like I told Mr. Albright.

23 **MR. YETTER:** You're right, your Honor.

24 **THE WITNESS:** Did the RTB cause the death of the
25 child or was there child abuse and neglect and the child died?

1 That was a discussion about -- with my new head -- or I guess
2 it was sent to my new head of child safety.

3 I want to make sure every determination, every RTB,
4 every UTD, every rule out is the correct finding based on a
5 quality investigation.

6 **BY MR. YETTER:**

7 Q Now none of these people are in the licensing group that
8 are talking about this?

9 A There was one -- there was one e-mail from Dr. Burstain I
10 think.

11 Q And she's sending it to Lisa Black who's head of CPS,
12 who's not in licensing?

13 **THE COURT:** So what was her -- what was her business
14 in doing that?

15 **THE WITNESS:** I have no idea on that one, your Honor.

16 **THE COURT:** Okay. Well, that's disturbing too. All
17 these things going back and forth and I'll tell you this too so
18 you may want to address it.

19 **THE WITNESS:** Sure.

20 **THE COURT:** I was disturbed about the testimony of
21 the people you put in charge.

22 **THE WITNESS:** Okay.

23 **THE COURT:** Ms. Black and Mr. Morris seemed not to
24 know what was going on and gave conflicting numbers data than
25 the people under them gave.

1 **THE WITNESS:** Yes, your Honor.

2 **THE COURT:** And I was very disturbed about that.

3 **THE WITNESS:** I understand that.

4 **THE COURT:** They didn't seem to know what -- much
5 about what they were supposed to know about.

6 **THE WITNESS:** I understand that, your Honor.

7 **THE COURT:** So what -- how do you address that?

8 **THE WITNESS:** Well, they're both very new in their
9 positions and they're still learning. If I had come here last
10 year, I just took this job two years ago, I couldn't have -- I
11 couldn't have answered the questions.

12 **THE COURT:** That's -- that's a concern also. There
13 seems to be no institutional memory in the whole department,
14 DFPS. Everybody that -- "Well, I just got this job so I don't
15 know about that study. I don't know about the last
16 recommendations two years ago that were never met. I don't
17 know this. I don't know that" and I find that disturbing in an
18 institution not to have a memory.

19 **THE WITNESS:** Your Honor --

20 **THE COURT:** And maybe 14 years in the Coast Guard
21 doesn't necessarily qualify you to run a licensing department.

22 **THE WITNESS:** There's a lot of institutional memory.
23 My deputy, Jennifer Simms, has been with this agency and she
24 indirectly supervises all those people for about ten years.

25 **THE COURT:** But in those two important places --

1 **THE WITNESS:** I understand that.

2 **THE COURT:** -- there's isn't any institutional
3 memory.

4 **THE WITNESS:** I understand that.

5 **THE COURT:** They all said, "Oh, I haven't looked at
6 that study. I wasn't in this job then. I don't know about all
7 of those PMUs, right, because I wasn't here then."

8 You'd think the first thing anybody would do that
9 took a job was to review what had gone before; that's all I'm
10 saying.

11 **THE WITNESS:** I understand.

12 **THE COURT:** It may not be a constitutional violation
13 but it's not a very good standard.

14 **THE WITNESS:** I understand, ma'am.

15 **THE COURT:** Oh, I don't -- I'm sorry to put you in a
16 position like that.

17 **THE WITNESS:** No, your Honor, I learned -- there's a
18 reason I sat here for ten days.

19 **THE COURT:** I know.

20 **THE WITNESS:** I wanted to hear --

21 **THE COURT:** And I saw you making notes and I was
22 impressed.

23 **THE WITNESS:** I wanted to hear and I will look at
24 problems and challenges in my agency and address them directly.

25 **THE COURT:** The only thing that concerns me about you

1 saying that is that if I had seen those statistics, those low
2 statistics about substantiated claim -- child abuse in foster
3 care, I wouldn't have waited until today to say, "I'm going to
4 do something about it."

5 **THE WITNESS:** Your Honor, I didn't wait until today.

6 **THE COURT:** Okay.

7 **THE WITNESS:** I've got stuff going on it already.

8 **THE COURT:** Okay, good.

9 **THE WITNESS:** I've talked to people but I'm going to
10 do a deliberate approach to it, take a look at it, do quality
11 QA, and figure out what's going on.

12 **THE COURT:** And also, he made a misstatement.
13 Mr. Yetter, that was not in all of Texas that was in foster
14 care. In all of Texas, 26 percent is substantiated or
15 something like that.

16 **MR. YETTER:** Yes, correct, correct, yes.

17 **BY MR. YETTER:**

18 Q Outside of foster care, you substantiate 25 percent?

19 A Yes.

20 Q But inside of foster care, it's 3 to 4 percent?

21 A Yes.

22 Q I want to talk about another area that deals with abuse
23 and neglect and other sorts of investigations that you've known
24 about for a while and I want to talk about how you've handled
25 it and whether you've been transparent with your stakeholders,

1 all right, Commissioner?

2 A (No audible response)

3 Q I'm focused on the UTD findings.

4 A Yes.

5 Q Okay. You know about that because you learned about that
6 relatively early on did you not?

7 A I don't think so.

8 Q Let me get -- let's get a chronology.

9 January 21, according to Paul Morris, the PMU
10 released this UTD report on January 21, 2014. It's only dated
11 January 2014 but I think he -- if my memory's right, he said
12 January 21. This is Defendant's Exhibit 1129.

13 You didn't get it right when it --

14 **MR. ALBRIGHT:** Plaintiffs'.

15 **MR. YETTER:** I'm sorry, Plaintiffs' exhibit.

16 Q You did not get it right when it was released, did you,
17 Commissioner?

18 A No.

19 Q But at least two months later Mr. Morris actually then did
20 give it to you didn't he when he sent you a memo, right?

21 A Show me the memo, please.

22 Q Sure. Let's go then now to Defendant's 70.

23 Defendant's Exhibit 70. This is Defendant's 70.

24 There we go, Defendant's 70.

25 Now let's go to page 2. This is a memo Mr. -- I

1 think you heard Mr. Morris talk about this and let's just blow
2 this up. It's from him to the commissioner.

3 A It's dated March 21st, 2014.

4 Q Okay. So that'd be two months later.

5 A More than two months later if it was early January.

6 Q I think he said it was January 21.

7 A Okay, fine.

8 Q So it's two months later. So then he tells you about it.
9 So he's been thinking about it for two months. He tells you
10 about it and he gives you this report and he says he's going to
11 do various things, true?

12 A Yes.

13 Q One of the things you told him to do was well, let's -- or
14 did it go vice versa, "I want to look at other, not just
15 physical abuse. I want to look at sexual abuse and negligence
16 of supervision."

17 Who told that to whom? Did you tell him or did he
18 tell you?

19 A I think he made that decision before he informed me.

20 Q Okay, fair enough. So then you know -- so here you are in
21 March. So now you've known it as we're sitting here today in
22 December, you've known about this for nine months, true?

23 A (No audible response)

24 Q Commissioner?

25 A Yes.

1 Q Nine months.

2 A Eight months actually.

3 Q Eight months. You've known about it for eight months and
4 in those eight months you have not told your council, the
5 council for the DFPS, have you?

6 A No.

7 Q And if we hadn't told your chair Tina Martin she wouldn't
8 know today as we're sitting here?

9 A True.

10 Q And you haven't told anyone at the -- you've told your
11 executives of the licensing group about this UTD issue, haven't
12 you?

13 A I think they told me about the issue.

14 Q Okay. Well, let me -- let's go to page one of the same
15 exhibit. About two weeks later -- page one of this exhibit,
16 just blow up that top -- on April the 9th about two weeks
17 later, Mr. Morris -- I'm sorry, somehow -- I'm not exactly sure
18 how this goes but you guys have something called DFPS Exec
19 Memos.

20 Do you see that?

21 A Yes, sir.

22 Q So somehow this -- this word of the UTD issue goes to the
23 executives of DFPS.

24 Who would that be, you?

25 A I don't think I'm on this memo. I see that Jennifer

1 Simms, and Katy Olse (phonetic) and Cheryl Nimmo (phonetic) are
2 on this e-mail.

3 Q Okay. So whoever the exec memos are -- whoever those
4 executives -- they get this memo but to your knowledge,
5 Commissioner, you've not shared this information with anyone
6 outside the licensing group?

7 A I don't think that's true.

8 Q But you personally. I've not seen any memo or e-mail --

9 A Well, Jennifer --

10 Q I'm just asking you.

11 A Jennifer Simms is my deputy.

12 Q Okay. So you've given it --

13 A Katy Olse is my chief of staff.

14 Q So you've given it to two of your fellow DFPS executives?

15 A I didn't. Mr. Morris sent those.

16 Q Okay. But no one gave it to the council, true?

17 A That's really not the purpose of the council but, no,
18 nobody gave it to the council.

19 Q Commissioner, no one gave it to the council. No one has
20 alerted the federal government that you found more instances of
21 confirmed physical, sexual abuse, and negligent supervision,
22 true?

23 A I do not know that.

24 Q You have -- no one has told you that the department has
25 updated the federal government on this, right?

1 A Correct.

2 Q Now one of the purposes -- you said it's not the purpose
3 of the council. The council, according to Ms. Martin, the
4 chair, is the -- is kind of the public's participation in the
5 department. It's a group of public citizens, isn't it?

6 A Yes.

7 Q And they're supposed to give you advice and
8 recommendations on things that are going on, rules and
9 policies, true?

10 A Their role is to review rules and policies and we update
11 them on certain things. They meet quarterly. They meet for a
12 fairly short period of time. So they are not a body I would
13 take a case issue to. They don't have the right to see
14 confidential information.

15 Q This UTD issue is a little bit of a crisis, isn't it,
16 Commissioner?

17 A You know, I --

18 Q You don't think it is?

19 A Well, crisis -- yeah, I don't -- if you read the Sunset
20 Commission -- if you treat everything as a crisis, it's a
21 crisis --

22 Q Commissioner, commissioner, I'm not --

23 A -- it's a crisis, you can't manage your organization. It
24 is a problem.

25 Q Commissioner, I'm not talking about the Sunset Commission.

1 I'm talking about the UTD issue.

2 A I understand that.

3 Q It's a crisis for you guys, isn't it?

4 A It's a problem that needs to be addressed.

5 Q A problem, okay. You haven't told the Sunset Commission
6 about it, have you?

7 A I don't know.

8 Q You didn't tell Stephens Group that was doing an
9 investigation during this whole time about it, did you?

10 A Again, I don't know.

11 Q You didn't tell the Casey family group that was doing an
12 investigation throughout this whole time?

13 A Well, that one it wasn't any complete -- it wasn't related
14 to the Casey -- the Casey review.

15 Q Well, it involved -- it involved abuse and neglect
16 investigations all across the state including Harris County,
17 didn't it?

18 A Casey was focused on permanency for children in long-term
19 care.

20 Q Now if you had told the council you know not only are they
21 a group of concerned citizens like Ms. Martin but there's a
22 former foster child on that council?

23 A Yes.

24 Q And she's a very outspoken young woman, isn't she?

25 A Yes, she is.

1 Q In fact, let's go to Plaintiffs' Exhibit 1531, and the
2 Court will -- you remember -- just off the top e-mail. You
3 remember that when she heard Gigi Edwards Bryant is the --

4 A Okay. She is no longer on the council. She was chair of
5 the council. There's another foster child on the council
6 today. She, six or eight months ago, was off the council.

7 Q Well, all right, Ms. Martin said she's still on the
8 council.

9 A I don't think she did.

10 Q Okay. She's the chair of the council, right?

11 A Ms. Martin's the chair. Ms. Bryant is the former chair.

12 Q Okay. But -- so there's a former foster child on this
13 council and you think if you had -- and it's pretty diligence,
14 this council is, they read the stuff that you give them?

15 A Ms. Bryant is no longer on the council. There's another
16 young woman, a very bright young woman, who is a foster or --
17 is on the council.

18 Q Okay. The council -- your experience is the council reads
19 the stuff that you give them?

20 A Yes.

21 Q Okay. So if you had actually told this council with this
22 former -- bright, young, former foster child in there, that we
23 have found that 75 percent of this slice of all our abuse and
24 neglect investigations, the UTD slice, are unreliable, do you
25 think she might have been concerned about it?

1 A That is simply not the kind of information I take to the
2 council.

3 Q So you just don't --

4 A The council -- that's not the purpose of the council.

5 Q You don't think a public body like the council who's
6 supposed to give you advice should know about something like a
7 75 percent error rate?

8 A This is not the kind of information that I share with the
9 council.

10 Q Now a good --

11 A I share completely different information.

12 Q Commissioner, a good child welfare system doesn't hide
13 problems, does it?

14 A I agree with that and I don't believe I'm hiding this
15 problem.

16 Q Well, one of the things --

17 A And that's the implication.

18 Q A good child welfare system doesn't ignore issues either,
19 does it, that are problem issues, true?

20 A I agree.

21 Q Now one of the things that we've heard a lot of testimony
22 on is situations where one child maltreats another child either
23 physically or sexually, right?

24 A Yes.

25 Q And before this lawsuit, before your deposition in

1 September, Commissioner, you had no idea whether the state
2 collected in an aggregate way statistics or incidents of child
3 on child maltreatment, did you?

4 A Did I say that in my deposition?

5 Q Yes, you did.

6 A Then I probably didn't.

7 Q Okay. In fact, you said, "I wasn't aware of that."

8 A Okay, correct then.

9 Q Okay. Now it is not just adults that commit abuse on
10 children in the foster care system is it?

11 A No.

12 Q You know as a commissioner that child on child abuse or
13 maltreatment is something that can cause tremendous harm to the
14 children, to both children involved?

15 A Any child abuse can cause harm to children, yes.

16 Q There's two victims in a child on child maltreatment
17 incident, isn't there?

18 A I agree.

19 Q Now you said, "Well, okay, I didn't know we didn't track
20 it but we would find an appropriate way to keep track of it,"
21 right?

22 A I guess I said that, Mr. Yetter, but I will tell you that
23 that is clearly an issue that after listening to the testimony
24 in this courtroom I'm going to take a look at. I want to find
25 out what other states do and also how you would use the

1 information. That's the trick is how do you -- if you track
2 it, how does it help you? Where does it show up? Does it
3 label the child? You know, that issue needs -- I need a hard
4 look at that. I want to -- I'm going to consult with the
5 Stephens Group on that.

6 Q Commissioner, are we just --

7 **THE COURT:** I was -- I was concerned about -- well,
8 you heard my concerns.

9 **THE WITNESS:** I'm concerned. Your Honor, I'm
10 concerned also and I'm going to -- I've got the Stephens Group.
11 I've got one of the best child welfare consulting organizations
12 that I've continued their contract.

13 **THE COURT:** Okay.

14 **THE WITNESS:** I'm going to talk with them next week
15 about this.

16 **BY MR. YETTER:**

17 Q Commissioner, by the time of your deposition in September,
18 you had been acting commissioner for almost two years -- not
19 acting. You had been the commissioner of the department for
20 almost two years --

21 A Yes.

22 Q -- and abused children is kind of like priority one and
23 it should be at least in any department.

24 A Safety, permanency, and well-being of all children in the
25 State of Texas is priority one for me.

1 Q And no one on your staff had every told you that the state
2 does not track abuse that occurs between children in your
3 foster care system?

4 A You know that's an issue --

5 Q Is that true?

6 A -- that I have heard about and --

7 Q Is that true, Commissioner?

8 A -- I don't know. I --

9 Q No one told you?

10 A I don't know.

11 Q Now are we now --

12 A There's a lot of -- there -- we track thousands of things
13 and I don't know -- I couldn't tell you what we track and what
14 we don't track, that's true.

15 Q Commissioner, if you don't measure a problem you don't
16 know how big it is, right?

17 A You've got to define "measure." Define "measure" and
18 evaluate a problem in order to figure out what you're doing.

19 Q Fair enough, and if you don't define measure and evaluate
20 a problem you can't fix it, can you?

21 A That's true.

22 Q Now a good child welfare system doesn't make excuses when
23 it does things that it shouldn't be doing, right?

24 A Show me the example you're using on that one.

25 Q I am. The placement array situation in our state is

1 broken, isn't it?

2 A The placement array is challenged.

3 Q It's a broken system and that's why you're supposedly
4 redesigning it, right?

5 A No.

6 Q Okay.

7 A Texas is unique and one of the issues and I've given this
8 a lot of thought -- one of our huge problems in the rural areas
9 in Texas is the lack of resources: mental health resources,
10 substance abuse resources, treatment resources. When I pick
11 foster homes for children in individual counties, I necessarily
12 have to have resources there for the children, particularly if
13 they have specialized problems. I will tell you that we do not
14 have the capacity in the State of Texas. We don't have
15 psychiatrists in West Texas or South Texas. We've got a real
16 issue on the availability of certain resources particularly in
17 the rural area that I think adds to the challenge of an array
18 of services in every county in the state.

19 Q Thank you, Commissioner. All right. Let me -- let's get
20 some basic principles.

21 It harms foster children to not have permanence?

22 A Absolutely.

23 Q Children that move frequently have more stability issues
24 and less permanency, true?

25 A It depends.

1 Q Okay. Children that move frequently have more stability
2 and less permanency.

3 You now think that that's a maybe so, maybe not?

4 A No, it depends on where -- it depends on where they move.

5 Q Okay.

6 A A child that goes to --

7 Q You agree with that as a basic proposition, Commissioner?

8 A As a general proposition I would agree with that.

9 Q Okay, as a general proposition; that's what I want to talk
10 about now.

11 It's generally accepted, including in the child
12 welfare field, that children that are moved frequently and have
13 less -- and have more stability issues and less permanency are
14 harmed, true?

15 A Say that again.

16 Q Children that move frequently have more stability issues
17 and less permanency.

18 Do you agree with that?

19 A I think the number --

20 Q As a general proposition.

21 A -- of times -- I think children that are moved frequently,
22 that creates challenges to their stability and it really
23 depends on where they're moving to.

24 Q Well, let me -- I'll just ask you one more time and that
25 results in harm to them, doesn't it?

1 A It could result in harm to them.

2 Q Children that are not placed closer to their home can
3 contribute to a child - it can hurt a child getting permanency,
4 right?

5 A If that was that child's home and if there was family
6 there to support the child, yes.

7 Q Now one thing you didn't know when we last talked to you
8 in your deposition was whether the number of children that were
9 being moved away from their home communities, outside their
10 county, had gone up or gone down. You didn't know that?

11 A I probably did not know that.

12 **MR. ALBRIGHT:** Your Honor?

13 Q But you --

14 **MR. ALBRIGHT:** Excuse me, excuse me. Your Honor, if
15 we are going to start referring to deposition testimony --

16 **THE COURT:** Line and page.

17 **MR. ALBRIGHT:** Please.

18 **MR. YETTER:** Certainly.

19 **THE COURT:** Thank you, Mr. Albright.

20 **THE WITNESS:** And is it possible for me to see it?

21 **MR. YETTER:** Sure.

22 **BY MR. YETTER:**

23 Q The question I have now is you now have heard -- sat in
24 the courtroom and you've heard that it has gotten worse, hasn't
25 it?

1 A I'd like to see my quote that you quoted that I supposedly
2 said. I want to see what it says.

3 Q Sure, page 19, lines 19 through 20, at the very bottom --
4 pages 19 through 24, and the real question is, hold on, I have
5 seen that -- you're talking about children out of county. "I
6 have seen that number. I see that number fairly often. I
7 can't give it to you right now. It varies from county to
8 county and it is a significant concern of mine, children being
9 placed outside their home counties."

10 A And Mr. Yetter, the question you asked me is not fair
11 coming out of that. I said I've seen that number. I see that
12 number fairly often. I can't give it to you right now. It
13 doesn't mean I don't know that number.

14 Q Commissioner, I'm not, this is not a test.

15 A Well --

16 Q I'm not trying -- my question was simply you didn't know
17 specifically what it was in your deposition and now you do?

18 A But that sounds like -- that sounds like I am clueless.
19 Look at what is said there. I think that --

20 Q I get that.

21 A -- that brings context to it --

22 Q I get it.

23 A -- optional completeness.

24 Q I get it, Commissioner.

25 **THE COURT:** Okay. I'm going to -- I'm going to do

1 it. You've got lawyers.

2 **THE WITNESS:** Yes, ma'am, you're absolutely correct.
3 You're absolutely correct.

4 **(Laughter)**

5 **THE COURT:** Just answer the questions. You've been
6 here, done this.

7 **THE WITNESS:** Judge, I --

8 **THE COURT:** Because I know it's frustrating as a
9 witness.

10 **THE WITNESS:** I greatly apologize.

11 **THE COURT:** Okay.

12 **BY MR. YETTER:**

13 Q Okay. The point is we now know that in 2010 there was 55
14 percent of children put out of their counties and in 2014 it's
15 somewhere between 60 and 64 percent being put -- placed out of
16 their counties, right?

17 A From what I heard yesterday it's 60 percent.

18 Q Sixty, but you didn't hear your colleague Gail Gonzalez
19 say 64 percent?

20 A I don't remember that. What I heard yesterday and what I
21 remember is 60.

22 Q All right.

23 **THE COURT:** I remember 60 also.

24 Q Now --

25 **THE COURT:** Ms. Gonzalez, you're right back there.

1 What did you say?

2 **MS. GONZALEZ:** Sixty percent.

3 **THE COURT:** Sixty percent.

4 **MR. YETTER:** Sixty. Well then I misheard, I
5 apologize, sixty percent.

6 Q Now all things being equal.

7 **THE COURT:** Oh, you know what? You forgot to ask the
8 commissioner did he want to adopt all the other statements --

9 **THE WITNESS:** Sure.

10 **THE COURT:** -- he said while not under oath, adopt
11 those, as his testimony now under oath.

12 **MR. YETTER:** Do you want to do that, sir?

13 **THE COURT:** Do you do that, sir?

14 **THE WITNESS:** Yes, your Honor, and as an offer to the
15 Court I would do that anyway.

16 **THE COURT:** I appreciate that but --

17 **THE WITNESS:** No, I wanted to say it. I thank you
18 for doing that.

19 **BY MR. YETTER:**

20 Q There is a capacity issue, isn't there, Commissioner?

21 A Yes.

22 Q Now capacity issue meaning the state does not have the
23 capacity, the placements in the counties where the children
24 need them in all cases? I'm not saying it never has it, I'm
25 just saying in all cases.

1 A We cannot place children in their home county in every
2 case.

3 Q Now let's move to foster care redesign.

4 You were the one that made the decision on
5 providence, didn't you?

6 A Absolutely.

7 Q And Providence, you had gotten advice from your staff
8 about Providence and it was mixed, wasn't it?

9 A Mr. Yetter, you need to show that to me because there were
10 memos that were presented prior to me being there. The
11 selection process was prior to me being there, and I want to
12 know what you're talking about.

13 Q Fair enough. Page 194, lines 14 through 18, you said you
14 talked to your senior staff.

15 A Okay. Can I see the paragraph above please?

16 Q Sure, we can blow up lines 5 to line 18.

17 **THE COURT:** Do you-all -- while you're doing that,
18 did anybody on the Plaintiffs' side find that Footnote Four in
19 that exhibit earlier?

20 **MR. YETTER:** Oh, I haven't, your Honor. It's in
21 the --

22 **THE COURT:** I just wanted it for the Commissioner's
23 benefit in case it changed anything you've said.

24 **MR. YETTER:** I'm sorry, thank you.

25 **THE WITNESS:** That says from the top --

1 **MR. YETTER:** Commissioner, let me just -- let me
2 interrupt you.

3 **BY MR. YETTER:**

4 Q The Court asked about Footnote Four. Footnote Four to
5 fiscal year 2013 said, "Illegal and exempted operations are not
6 included in this data." So like having an illegal daycare,
7 it's an unlicensed daycare.

8 A That doesn't clarify it but that -- I mean I'd have to go
9 back and look at it but thank you.

10 Q Okay. It's on page 96 of the--

11 A Illegal and --

12 Q "Exempted operations" --

13 A Okay.

14 Q -- "are not included in this data."

15 A Okay. I think that those two questions together, that's
16 what I said, I had mixed advice.

17 Q Okay. "I had mixed advice. Some people wanted to go with
18 Providence and some people did not want to go with Providence."

19 A That's absolutely true.

20 Q In fact you got a recommendation from the project group
21 that said don't go with Providence, true?

22 A Yes.

23 Q And Providence as we all know has since left. You only
24 have one outstanding out there, right?

25 A Mr. Yetter, I did something else after I got that advice.

1 Q Commissioner, I appreciate that you want to tell me --

2 A Okay, fine.

3 Q -- a lot of things.

4 A That's fine.

5 Q I'm just trying to move through several -- a number of
6 topics.

7 A I just --

8 Q Providence is no longer -- you may have gotten other
9 advice I take it?

10 A I actually brought Providence in. I brought their senior
11 management in. I talked to them. I got assurances from them.
12 I told them what the concerns were, showed them what the
13 concerns were, and I did make the decision to go forward, but
14 it wasn't -- it was a deliberate process.

15 Q All right, and they are no longer with you?

16 A No, they are not.

17 Q They're no longer the SSCC, true?

18 A That's absolutely true.

19 Q Plaintiffs' Exhibit 721, your Honor, I don't -- there's no
20 objection to it. I don't know if it's been admitted yet.

21 **MR. ALBRIGHT:** What number's that?

22 **MR. YETTER:** Seven-two-one.

23 **MR. ALBRIGHT:** Defendant's exhibit?

24 **MR. YETTER:** Plaintiffs' Exhibit 721.

25 **THE COURT:** It's admitted previously.

1 **MR. YETTER:** Okay, then I want to just make sure it's
2 verified.

3 **BY MR. YETTER:**

4 Q I want to go back to one document that we talked about a
5 little bit yesterday, Defendant's Exhibit 137, and let just
6 make sure if we can understand what the document reflects,
7 Commissioner, and maybe you can or cannot help us, Defendant's
8 137.

9 Okay. We talked about this one column. See the
10 column on the far right?

11 A Mr. Yetter, I don't think I can help you on this one. I
12 mean I've seen it --

13 Q I get it.

14 A -- but understanding the top part and the footnotes and
15 all of that stuff, I just don't think I can help you on this
16 one.

17 Q Let me just ask you a couple of questions.

18 A Sure.

19 Q So the -- we know what TPR means. That means --

20 A Yeah.

21 Q -- your parental rights have been terminated.

22 A Yes, sir.

23 Q Those parents are no longer your parents --

24 A Right, I know that very well.

25 Q -- in the eyes of the law.

1 The next column says "Goal Adoption, No Adoption
2 Placement" and I wanted to see if you agree with me on this.

3 Commissioner --

4 A Well, okay --

5 Q -- for a foster child in the custody of the State of Texas
6 if the goal is adoption the only way you can get adopted is if
7 your biological parents' rights are terminated, true?

8 A I don't -- that's true --

9 Q Okay. Just take --

10 A -- but I don't think everybody in there --

11 Q -- stay with me. I just want to take it a step at a time.

12 A Sure, sure.

13 Q So if you're going to get adopted it's going to be by
14 somebody other than your biological parents because they don't
15 need to adopt you, they're your parents, right?

16 A That's correct.

17 Q Okay. So if you have a column of children that adds up to
18 7,244 in our state and their goal is adoption they've either
19 got to have their rights terminated, TPR, true?

20 A Yes.

21 Q Or they're on track to get the parental rights terminated.
22 Otherwise, the goal would not be adoption, true?

23 A Correct, I think.

24 Q All right. Let's move to another topic.

25 A But that means that there's children -- those are not all

1 PMC kids. They are PMC kids that are in the process and
2 there's also dual tracks. You can have a goal of adoption, a
3 goal of reunification. You have multiple goals when you have
4 children in that category.

5 Q I get it. Let's just do -- that's just PMC children.

6 A The last was not -- I don't think the last one was just
7 PMC children.

8 Q Okay. This whole chart is PMC children.

9 A Okay, then, okay, good.

10 Q Okay. So you have 7,244 PMC children whose goal is
11 adoption and they're not in an adoption placement according to
12 the state's chart.

13 A Okay.

14 Q As of August 2014, right?

15 A Yes.

16 Q Okay. I want to go to another issue, caseloads.

17 Now caseloads is not a new issue in the State of
18 Texas, is it?

19 A Tell me what you're talking about.

20 Q There have been -- the Court has heard testimony of a
21 number of studies and internal reviews and outside consultants
22 that have come in and said, "Here are problems in the foster
23 care system in the State of Texas. Here's what we think you
24 should do to fix them." You know about at least some of these.

25 A I probably -- I probably was involved in most of them.

1 Q You probably were involved in most of them, okay.

2 There have been countless studies and countless is
3 hyperbolic I know but there have been lots of studies in which
4 the state either internally or some consultant told the state
5 caseloads are too high, you need to lower them, right?

6 A That's probably true.

7 Q I want to just focus on one that we haven't spent any time
8 -- it's in evidence but we haven't really spent a lot of time.
9 These studies again and again and again are making the same
10 recommendations at least in part.

11 A Show me the study. Show me the recommendation.

12 Q Sure. Plaintiffs' 1964, this is four years ago. Let's
13 just blow this up.

14 You know what the Adoption Review Committee isn't --
15 you know what that is, don't you?

16 A I've seen that report.

17 Q You've seen this report. This is -- this is kind of
18 organized by the state. It's not specifically DFPS but it's a
19 state agency or a state organization.

20 A I think it was appointed out of the governor's office. I
21 think all those -- the way these kind of things normally --
22 they set up a committee by statute and then various -- those
23 people all get like an appointee.

24 Do you know who the appointees were on this one?

25 Q We'll get to that.

1 So this isn't an outside consultant. It's not
2 actually an internal DFPS. This is another state agency or
3 committee that is commenting on the DFPS in December 2010,
4 right?

5 A It's a -- generally it's a public committee appointed by
6 somebody or a number of people.

7 Q Let's go -- fair enough. Let's go to page two. This is
8 the chairman's letter and let's blow up -- if you can see the
9 very bottom signature and see if you know this person, Matt --

10 A I do not know that person.

11 Q -- Matt Kouri's (phonetic) the chairman on behalf of the
12 Texas Adoption Review Committee.

13 Let's blow up the last paragraph. Well, let's go up
14 to the top paragraph first.

15 In 2009, the legislature and the governor asked the
16 committee to take a hard look at the Texas foster care system
17 and uncover barriers to adoption that existed for Texas' most
18 vulnerable children.

19 A Yes.

20 Q Okay. Now let's go the last paragraph. There's stuff in-
21 between but this is in evidence.

22 "Our recommendations include several bold steps." It
23 goes on to say that they think they'll really help.

24 Second sentence, "Many of our recommendations are
25 sadly ones that have been made in prior years including a

1 report by the similarly charged 1996 governor's committee to
2 promote adoption."

3 Do you see that?

4 A Yes.

5 Q Let me look at just a couple of the recommendations here.

6 A Can I see who was on the committee?

7 Q Let me see if that's in this document. Yes, page four.

8 Okay. Take a quick look if you wouldn't mind, Commissioner --

9 A Sure.

10 Q -- because I'd like to move on into the document.

11 A I --

12 Q Got it?

13 A -- think I may have met Ann Bradford but I don't know any
14 of those people.

15 Q Fair enough. Let's blow up the next -- that one right
16 there.

17 Does any of those names look familiar to you?

18 A Gail Gonzalez.

19 Q There you go. She's testified in this case?

20 A Yes, she has.

21 Q Okay. Now let's go to just a couple of the -- there's
22 lots of recommendations. Page 13, Priority Action Plan, just
23 that first top and that the title on the first paragraph.

24 "There's a detailed action plan which will be crucial
25 to accomplishing the recommendations of the committee."

1 Do you see that?

2 A Yes.

3 Q Okay. Let's look at the first action plan, the first
4 action in the plan. "The system. Internal and external
5 obstacles that impede permanency or adoption, CPS
6 conservatorship caseloads."

7 So those are the primary conservatorship caseworkers,
8 right?

9 A (No audible response)

10 Q Conservatorship caseloads, you know what we're talking
11 about?

12 A Yes, yeah.

13 Q So it's apples/apples, is reportedly 30 to 35 cases per
14 worker in fiscal year 2009. See that?

15 A Yes.

16 Q Okay. Now we've heard your colleague, Ms. Burstain, she
17 gave us some figures yesterday and the numbers she figured out
18 for fiscal year 2014 and it was 31.1 caseload for CVS.

19 Do you need me to put that up to refresh your memory?

20 A That's where she's looking in stages of service and not
21 children?

22 Q Okay. This is stages. This is -- this is what she calls
23 caseload. This is what they call caseload.

24 A Okay.

25 Q Okay. So apples to apples, fiscal year 2009 is almost

1 exactly what fiscal year 2014, today is, and the recommended
2 change for improvement, "Reduce caseload to 15 to 17 [sic]
3 worker in compliance with national standard." That was the
4 recommendation four years ago by the Governor's Committee on
5 Adoption Review, true?

6 A I'm not sure it was the governor's committee. I think it
7 was probably a legislatively created -- I don't know. I don't
8 know what this was.

9 Q Fair enough, but that was the recommendation four years
10 ago?

11 A That was the recommendation and I don't know who -- I
12 don't know where this report went to but go ahead.

13 Q Okay. Well, we know it hasn't been followed up on, true?
14 You haven't done that. You haven't adopted any sort of
15 national standards for caseloads?

16 A That's correct.

17 Q Now you also know that high caseloads -- Commissioner,
18 you'd agree that high caseloads have a number of not so good
19 consequences, don't they?

20 A They can.

21 Q And one of the things you focused on or at least you are
22 focused on is that they put a burden on the caseworker, true?

23 A High caseload does, it's logical.

24 A A high workload puts --

25 Q High workload --

1 A There's a difference between workload and caseload. A
2 high workload puts a burden on the worker.

3 Q Okay. So you'd agree, wouldn't you, as a basic matter
4 that a high caseload usually means a high workload. You've got
5 lots of cases to take care of. You're going to have a lot of
6 work to do, true?

7 A It absolutely depends on what state of service it is,
8 where the kids are, what kind of work needs to be done, whether
9 they're placed in region or out of region.

10 Q One of the primary reasons why conservatorship caseworkers
11 quit is high caseloads and high workloads, true?

12 A It is part of like the top three is what is stated on our
13 exit surveys.

14 Q Sure. This same report of the adoption committee, let's
15 go to page 30, and let's go -- let's just blow up the reason --
16 the title. There you go, "Reasons for Quitting," I'm sorry.
17 Reasons for Quitting and the number one reason from the
18 legislature's adoption review committee that they put in their
19 report was overworked.

20 A I have absolutely no idea what data they were relying on
21 to put that chart together.

22 Q You doubt the reliability of the Adoption Review
23 Committee's report?

24 A Actually, I know something about how these are put
25 together. I don't think this was a staff committee. It was

1 just put together, a group of people, and I'm not sure what
2 they had access to. So I don't know where they got that data.
3 I'd want to know where the data came from.

4 Q One of the reports that makes almost exactly the same
5 recommendation is the Apple -- the Texas Appleseed Report that
6 came out the same year, 2010, right?

7 A I'd like to see exactly what the recommendation was.

8 Q But you know about --

9 A And I know I was involved -- I was involved in it. I know
10 that.

11 Q Sure, and so you're going to be able to confirm for the
12 Court that the Texas Appleseed report was based on careful
13 research and review, wouldn't you agree?

14 A Appleseed generally does a good job.

15 Q And you had -- you had an input. I think at the beginning
16 it said you had -- you vetted the recommendations and you had
17 input into the process.

18 A That's -- I did not vet the recommendations. I was on --
19 kind of helping them set up the study. They're a great
20 organization. I have no complaints with Appleseed. They gave
21 me an award last month.

22 Q Sure, sure, they did.

23 A But they -- I don't know -- I mean I didn't vet -- I
24 didn't vet that.

25 Q So -- but you do know -- you can confirm as commissioner

1 that the Appleseed report went to the department, went to the
2 DFPS?

3 A Absolutely.

4 **MR. YETTER:** And so, your Honor, we're going to -- we
5 offer again, we're going to reoffer the Appleseed report. This
6 is Plaintiffs' 1988.

7 One, it's not hearsay at all because it's at a
8 minimum it is notice --

9 **THE COURT:** Wait, 19 --

10 **MR. YETTER:** 1988.

11 **THE COURT:** Okay.

12 **MR. YETTER:** It is notice to the department of
13 recommendations by a respected group in the state about how to
14 fix the foster care system in the -- in our state.

15 **THE COURT:** Okay.

16 **MR. YETTER:** Number one --

17 **THE COURT:** Objection?

18 **MR. ALBRIGHT:** No objections, your Honor.

19 **THE COURT:** One, nine, eight, eight is admitted.

20 **(Plaintiffs' Exhibit 1988 was received in evidence)**

21 **MR. YETTER:** Okay. I was about ready to go on and
22 on. I may lose you.

23 **(Laughter)**

24 Q Okay. So --

25 **THE COURT:** I've actually had lawyers though that,

1 you know, when I rule in their favor they can't stop.

2 (Laughter)

3 Q Okay. So you would agree, would you not, Commissioner,
4 that when -- there's a difference between a child in temporary
5 managing conservatorship and permanent managing
6 conservatorship?

7 A Yeah. This is a very important report but it really
8 focuses on the role of courts.

9 Q You would agree there's a difference --

10 A Okay.

11 Q -- between the TMC --

12 THE COURT: Okay, listen. One more time, this is a
13 question and answer business.

14 THE WITNESS: I'm sorry. I'm sorry. I understand
15 that, ma'am.

16 THE COURT: Unless it's you and me.

17 THE WITNESS: Yes, Judge. Yes, Judge. I understand
18 that completely.

19 THE COURT: Okay.

20 BY MR. YETTER:

21 Q You'll agree that there's a difference between a child
22 that's in TMC and a child that's in PMC, isn't there?

23 A Yes, sir.

24 Q And we've talked -- we've heard a lot of the issues here
25 but one of them is the court hearings or the updates for the

1 TMC child are more frequent than for the PMC child, right?

2 A They can be.

3 Q The service plan for TMC is reviewed and modified as
4 needed four times in that first year and then for PMC children
5 it's only twice a year at least by policy, true?

6 A By policy but it's up to the Court how often those
7 children come back into court.

8 Q Now one of the things that people that have studied the
9 Texas system, and PMC is a designation that's totally unique to
10 Texas, isn't it?

11 **THE COURT:** Lights, please.

12 Q PMC is a designation that is totally unique to Texas. You
13 haven't seen another state that labels its children in the
14 foster care system as part of the permanent managing
15 conservatorship of the state, right?

16 A I -- I think that's correct.

17 Q Okay. Let's go to page 17.

18 Appleseed looked at this and Appleseed made an
19 observation at the very top paragraph, the carryover paragraph,
20 about what happens to children when they go into TMC and what
21 Appleseed said is the entire tenor of the case changes once
22 children enter PMC.

23 Did you hear -- do you see that, Commissioner?

24 A Yes.

25 Q Do you remember hearing the phrase "forgotten children"?

1 A Yes.

2 Q I didn't make that up, that was Comptroller Carole Keeton
3 Strayhorn that called her report "The Forgotten Children,"
4 right? That was ten years ago, wasn't it, Commissioner?

5 A Her report says what it says.

6 Q It was ten years ago, wasn't it?

7 A I think so.

8 Q And it was titled "Forgotten Children," wasn't it?

9 A I think so.

10 Q The entire tenor of the case changes once children enter
11 PMC. It is as if quote the clock stops ticking and quote the
12 pressure is off since the child is no longer in quote temporary
13 custody of the state because the most pressing legal issue,
14 whether a child will be returned home, has been determined
15 there is a sense that the child has achieved some quote
16 permanency.

17 Do you remember that phrase in the Appleseed report
18 back in 2010?

19 A I don't remember it. I can read it.

20 Q Even the name of the child's status implies stability.
21 The child is now in quote permanent managing conservatorship.
22 Nothing is farther from reality.

23 Now the Appleseed -- did you see where I read?

24 A Yes.

25 Q Okay. The Appleseed report goes on to basically say that

1 even though all the pressure's off and the clock stops ticking
2 these children are not in a permanent placement. They move
3 from place to place to place.

4 A There are parts of that that I don't agree with.

5 Q Now --

6 **THE COURT:** Okay, but in reality the question was you
7 do agree that the children are not in a permanent placement?

8 **THE WITNESS:** Yes. In PMC --

9 **THE COURT:** Except the label.

10 **THE WITNESS:** PMC children are in the permanent
11 managing conservatorship of the state which is the same as
12 managing conservatorship of the state.

13 **THE COURT:** So they're not in a permanent placement?

14 **THE WITNESS:** They could be.

15 Q But they -- but the vast overwhelming number of children
16 in PMC do not stay in one place?

17 A Yes.

18 Q You know the statistics, Commissioner. They are moved
19 from place, to place, to place, aren't they?

20 A The longer a child stays in care the more they move.

21 Q And Commissioner, the longer a child stays in the custody
22 of the State of Texas the harder it is for that child to be --
23 to be placed permanently; isn't that true?

24 A Permanency is incredibly important and, yes, I need -- we
25 need to get kids -- kids don't need to age out.

1 Q The answer's yes. The longer children stay in the custody
2 of the state the harder it is for them to achieve a permanent
3 home, true?

4 A That can be true.

5 Q Well, that is exactly what you said. It's true or not
6 true, in your opinion?

7 A I mean there are different cases.

8 **THE COURT:** He's talking about typicality.

9 **THE WITNESS:** Typicality. As a general statement, I
10 agree with that.

11 Q All right. Now caseloads is one of the things that
12 Appleseed talked about, page 99.

13 **MR. ALBRIGHT:** What exhibit are we in?

14 **MR. YETTER:** Exhibit 1988, 2010 Appleseed report.

15 Q Now here is -- let's blow up the first two paragraphs
16 under CVS caseload. So apples to apples. We're talking about
17 conservatorship workers, are we not?

18 A Yes, I think so.

19 Q Okay. CVS, that's conservatorship?

20 A Sure.

21 Q Okay. So this is now talking about June 30, 2010. So
22 that's almost the end of fiscal year 2010, right?

23 A Yes, September would be the end of the fiscal year I would
24 think.

25 Q August 31 would be the end of the fiscal year?

1 A August 31, correct.

2 Q So it's just two months shy of the end of the fiscal year.
3 CPS reports that the daily caseload average for conservatorship
4 caseworkers throughout the state was 29 children.

5 So it had gone down just a bit from fiscal year 2009,
6 right, based on what we just saw a minute ago, true?

7 A Yes.

8 Q Okay. However -- right in the middle -- however, the
9 recommended caseload per a conservatorship worker is no more
10 than 15 to 16 children, true?

11 A I want to know what that 247 says, where it comes from.

12 Q Two forty-seven at the bottom.

13 A The footnote.

14 Q Let's blow -- can you -- there you go. Can we see -- can
15 you read that?

16 "Two forty-seven, Child Welfare League of America
17 Recommended Caseload Standards" and it gives their website.

18 A I understand. So it's the Child Welfare League of America
19 recommended caseload standards.

20 Q And that's what Texas Appleseed said were the -- were the
21 recommended caseload, true?

22 A That's what that says.

23 Q Now Texas Appleseed, there again, you'd agree with us,
24 they're a pretty darn respected organization, aren't they?

25 A They're a very good organization.

1 Q They have nothing but the best interests of the children
2 at heart, right? There's no -- right, true?

3 A Absolutely.

4 Q They have no secret agenda, motive. They're a nonprofit,
5 true?

6 A They're an advocacy organization. They're a great
7 advocacy organization.

8 Q They're advocating for children that cannot protect
9 themselves, right?

10 A They're a great organization.

11 Q The next paragraph -- the first sentence of the next
12 paragraph.

13 "Almost every stakeholder in the foster care system
14 interviewed for this study expressed the belief that
15 conservatorship case -- conservatorship workers are overworked
16 to the point of not being able to do their jobs properly."

17 Then they have a footnote which simply says, "Indeed
18 the only people who disagreed were caseworkers who thought
19 their current caseloads in the thirties were much more
20 manageable than in years past when they had forty or fifty
21 cases."

22 A That's what it says including the footnote.

23 Q Now Commissioner, since you sat through the whole trial,
24 did you hear any witness on the stand that wasn't a DFPS
25 executive say anything contrary to what the sentence says there

1 today?

2 A The witnesses said what they said. I don't remember. I
3 don't -- I can't go back and remember all of that.

4 Q Every witness that testified --

5 **THE COURT:** All those other people you have working
6 for you could.

7 **THE WITNESS:** They probably could.

8 **(Laughter)**

9 **BY MR. YETTER:**

10 Q Now the -- one of the -- there is -- this isn't the only
11 Texas Appleseed Report, is it? This is 2010.

12 A Show me another report. I mean I know about this report.
13 I don't --

14 Q Sure. Plaintiffs' Exhibit 1966, and let me just show you
15 the cover to see if you can validate. It's not in evidence
16 yet, your Honor, and I believe there -- at least there was an
17 objection. Okay. Just blow up the inside piece, the title and
18 the inside piece.

19 A It's a 2007 report.

20 Q It's September 2007.

21 Can you pull the bottom down just a smidgeon just so
22 we can get the -- there you go, there you go. Okay.

23 September 2007, Texas Appleseed, Texas Foster Care.

24 Do you recall --

25 A This one I don't recall. I just got off the bench and I

1 was trying to build my law practice so 2007 I don't recall that
2 one.

3 Q You have no doubt that the Texas Appleseed gave this
4 report to the department, do you?

5 A I wouldn't doubt -- I don't know but I wouldn't doubt that
6 they did.

7 **MR. YETTER:** Your Honor, we offer again, if nothing
8 else, as notice to the department in September 2007, we offer
9 Plaintiffs' 1966.

10 **MR. ALBRIGHT:** On that conditional offer, no
11 objection.

12 **THE COURT:** Admitted.

13 **(Plaintiffs' Exhibit 1966 was received in evidence)**

14 **MR. YETTER:** Let's go to page six and this -- that
15 first paragraph.

16 Q You read Comptroller Carole Keeton Strayhorn's report,
17 Forgotten Children, did you not, Commissioner?

18 A I'm sure I read parts of it.

19 Q And it reported among other things and that was in 2004;
20 that was 10 years ago, wasn't it?

21 A I think so.

22 Can you give me the paragraph before that?

23 Q Sure. Let's put page five and six up if you can, 2005
24 Reform Efforts.

25 A Okay.

1 Q "In April 2004 after a year-long investigation the
2 Comptroller Carol Keeton-Strayhorn released Forgotten
3 Children."

4 Does that give you the context that you wanted?

5 A That's correct.

6 Q Okay.

7 A I mean that's what it says and I have no reason to
8 disagree with that.

9 Q Okay. Let's go back to page six and the first paragraph.

10 A And if you just give me the top of page six too. There's
11 two lines up there.

12 Q We just showed you that just a minute -- okay, there you
13 go.

14 A Oh, I thought you showed me the other part.

15 Q There you go. Now Forgotten Children reported among other
16 things -- this is ten years ago - that DFPS: "Frequently moved
17 children from one caregiver to another."

18 Do you see that, Commissioner?

19 A Yes.

20 Q You heard testimony in this trial about DFPS frequently
21 moving children from one caregiver to another, did you not?

22 A Yes.

23 Q That the department had heavy caseloads and high
24 caseworker turnover.

25 Do you see that?

1 A Yes.

2 Q And you heard testimony in this case that in 2014 heavy
3 caseloads and high caseworker turnover -- you heard testimony
4 about that, didn't you?

5 A I did. In certain parts of the state we have heavy
6 caseloads and we have high worker turnover; that also varies in
7 certain parts of the state.

8 Q Okay. Next, let's jump down a little bit just to save
9 time.

10 "Potentially dangerous children such as sexual
11 offenders or those with violent criminal records -- and those
12 with violent criminal records -- with others."

13 You've heard situations including the children that
14 are the named plaintiffs here that have been mixed with
15 children with documented sexual activity in their past.

16 A I've heard the specific testimony in this case.

17 Q Okay. Now let's go to page 11. We all agree -- at the
18 bottom, the bottom paragraph.

19 "Increasing caseloads and inadequate staffing. We
20 all agree that a well-trained, experienced, and adequately
21 staffed workforce is crucial." True?

22 A Yes.

23 Q "The primary conservatorship caseworker is the foster
24 child's gateway to critical services," isn't it? Isn't that
25 person?

1 A The primary caseworker has the responsibility with the
2 Court and there's a bunch of other supports that support the
3 primary worker.

4 Q See if you agree with that --

5 A And together they provide the work for the child.

6 Q I want to see if you agree with the last sentence and this
7 is 2007.

8 "When those caseworkers are inadequately trained, or
9 inexperienced, or overburdened, the system breaks down and
10 children in the system are harmed." True?

11 A I don't agree with that.

12 Q You don't agree with that. Okay. Page 22 -- actually,
13 let's go to page 29. The second paragraph from the bottom.

14 One -- this is -- one of the comptroller's --
15 recommendations in the comptroller's report ten years ago, the
16 Appleseed report says -- there's a number of recommendations.
17 I want to look in the middle, "Keeping sexually abused children
18 separate from other children."

19 You know that it's widely accepted in the child
20 welfare field that sexually abused children have a propensity
21 to act out on other children, right?

22 A That can happen.

23 **THE COURT:** Well, isn't that why they accept it as a
24 fact?

25 A Sexually abused children can act out on other children.

1 **THE COURT:** Okay.

2 **BY MR. YETTER:**

3 Q Okay. That's a risk, isn't it? It's an obvious known
4 risk, true?

5 A If we know the child sexually abused that is a risk.

6 Q Okay. Now -- and so one of the things -- ten years ago
7 the comptroller said, "The department needs to track and report
8 the number of reports it receives concerning child on child
9 physical and sexual abuse by facility."

10 Do you see that?

11 A Yes.

12 Q In other words, she's not just saying label anybody a
13 perpetrator, is she? That's not what that recommendation says.

14 A I can see what it says.

15 Q Okay. It says track it, including by facility. So if you
16 happen to know, for example, that there is an RTC in a little
17 town in the panhandle called Leveland that has a history of
18 physical abuse on children, between the children, that you
19 track it so you know there's a problem in that facility, right?

20 A That's what that says.

21 Q Okay. That's a good thing, isn't it?

22 A I want to look at that issue and I want to see how it'll
23 work and how do we protect children.

24 Q Ten years later in our state, you know, Commissioner, that
25 your department does not track the number of reports it

1 receives concerning child on child physical and sexual abuse by
2 facility, true?

3 A It doesn't -- it doesn't do it that way, correct.

4 Q Now there are -- your department does have caps on the
5 number of child caseloads, don't you?

6 A I don't know what you're talking about.

7 Q In certain instances your department has caps on how many
8 children a single caregiver can -- is entitled -- is allowed to
9 take care of, right?

10 A I believe you're correct but -- I guess -- please say that
11 one more time just so that I understand what you're saying.

12 Q Sure. Okay. Let's just start at a simple level.

13 The department has rules that we have heard are
14 inflexible that for a family foster home there's a cap of six
15 children, true?

16 A Yes, yes, that's true.

17 Q So that's because -- it's for the safety and well-being of
18 the children, isn't it?

19 A Yes.

20 Q Okay.

21 A To create a more home like environment and --

22 Q Okay, well --

23 A -- there's a -- our basic care foster home goes to six
24 children.

25 Q And it's an inflexible cap we have been told more than

1 once?

2 A It is an inflexible cap.

3 Q Okay. So that's a child caseload for lack of a better
4 word for foster parents in a family foster home, true, and it's
5 capped at six, right?

6 A I wouldn't call it a child caseload but our basic foster
7 care homes can only have six children --

8 Q Okay.

9 A -- including your own children and adopted children.

10 Q So actually what the state is saying is for the safety of
11 the children those foster parents cannot be responsible for
12 more than six children in their household caps?

13 A They cannot be responsible for more than six children in
14 their household total.

15 Q Capped, okay. Now if they're infants --

16 A And I think if the children are younger there's even a
17 tighter cap.

18 Q You anticipated where I was at.

19 If there are babies then it's capped at two babies to
20 one caregiver, true?

21 A I believe that's true.

22 Q Okay. And if they have medical needs of a certain type
23 it's capped at four children with special medical needs to one
24 caregiver, true?

25 A I think that's the current status that I -

1 Q Caps of children that a caregiver can take care of are not
2 unusual in our state, are they?

3 A The minimum standards say what the minimum standards --
4 which I agree with what you just said.

5 Q And those are good for the children, aren't they?

6 A I think they provide protection for children.

7 Q Okay. Next to the actual caregiver of a child, the foster
8 parent, next to that caregiver one of the most important adults
9 in foster children's lives to take care of their safety,
10 permanency, and well-being is the conservatorship caseworker;
11 isn't that true?

12 A It's one of the most important workers in their life.

13 Q And if you have particularly effective and efficient
14 foster parents they don't get more than six children, do they?

15 A Unless they become a foster group home.

16 Q Sure, okay. That's a different category and then you
17 have --

18 A It is but that's what --

19 Q -- slightly different issues.

20 A Yeah.

21 Q And somebody could say, "Well, that's inefficient. I may
22 find foster family parents who could actually take seven or
23 eight and do a great job because they're super efficient," but
24 that's not what the state does. It puts a cap, right?

25 A The regulation say exactly what they say.

1 Q Okay.

2 A But I don't call them a cap and the regulations don't
3 either.

4 Q Now a caseworker -- a caseworker -- for a conservatorship
5 caseworker that gets a cap on the number of children they're
6 responsible for, that's not bad for the caseworker, is it?

7 A It might be bad for the supervisor or for the kids in
8 care. I don't think caps are a good thing. I told you that
9 once before.

10 Q I know what you said. I know you believe that, that's the
11 -- that's the department's policy. It is not going to do caps,
12 right?

13 A No.

14 Q It's not going to do national standards, right?

15 A We're going to --

16 Q True?

17 A We are going to deal with the workloads --

18 Q True? You're not doing national standards?

19 A It's -- we do not have regulations -

20 **MR. ALBRIGHT:** Objection, your Honor.

21 A -- that enforce --

22 **MR. ALBRIGHT:** No, excuse me. I want to object to
23 that question unless he defines what the -- what national
24 standards he's talking about.

25 **MR. YETTER:** Fair enough.

1 **MR. ALBRIGHT:** Objection, vague and ambiguous.

2 **MR. YETTER:** Fair enough.

3 **THE COURT:** I think the CWLA or whatever that is --
4 maybe I've got the -- or the IBW or something.

5 **MR. ALBRIGHT:** CWLA.

6 **MR. YETTER:** CWLA.

7 **THE COURT:** They said 15 to 17.

8 **MR. YETTER:** They did. Caseloads, we're talking
9 caseloads. The State of Texas is just where they refuse to
10 adopt national standard caseloads for conservatorship workers,
11 true?

12 **MR. ALBRIGHT:** Same objection, your Honor. It's a
13 vague and ambiguous question in all of the issues of the
14 case --

15 **THE COURT:** Overruled.

16 **MR. ALBRIGHT:** -- for him to say national standards.

17 **THE COURT:** Okay, overruled.

18 **THE WITNESS:** If you're talking about CWLA standards,
19 my understanding is they're under revision right now and we
20 have not --

21 **BY MR. YETTER:**

22 Q Yes or no, Commissioner? You didn't adopt CWLA national
23 standards for caseloads?

24 A We have not.

25 Q Are you going to adopt any national standards for

1 caseloads?

2 A We have not to this point.

3 Q Are you going to adopt any caseload standards?

4 A I'm going to work on workloads. I'm going do a work study
5 and figure out how we make sure the workload for workers --

6 Q Commissioner --

7 A -- is right.

8 Q -- work with me.

9 A Well, don't --

10 Q Are you going to adopt any caseload standards?

11 A Okay. I don't like you yelling at me, that's one thing I
12 don't like.

13 Q I apologize for that. Are you going to adopt any caseload
14 standards?

15 A I don't know what I'm going to do. I do not have them
16 today.

17 Q So today, Commissioner, we are just to trust you to do the
18 right thing? Is that fair?

19 A You know --

20 Q With no disrespect, Commissioner, are we just supposed to
21 trust you that you'll figure out the right thing to do on
22 caseloads?

23 A No, absolutely not.

24 Q Thank you.

25 A You need to trust the Sunset Commission. You need to

1 trust the Stephens Group. You need to trust my legislative
2 oversight to make me do what is best for the children in the
3 State of Texas.

4 Q Somebody has to make the department do what's best for the
5 children --

6 A They do not have --

7 Q -- on caseload standards.

8 A That's not true.

9 Q Okay.

10 A That is absolutely not true.

11 Q Okay. The Casey Family Home referred to you said the
12 single most -- the best thing you could do to fit your system
13 is have a well trained staff that has workloads consistent with
14 national standards. You know that, don't you?

15 **THE COURT:** Did they say that?

16 **MR. YETTER:** In 2014.

17 **THE WITNESS:** Show me that but I -- I need a well
18 trained staff.

19 Q That -- just --

20 A I don't know whether they said anything about caseload
21 standards.

22 **THE COURT:** Okay. Just -- I just wonder if you just
23 -- if you don't know the answer just say you don't know.

24 **THE WITNESS:** I don't know that.

25 **MR. YETTER:** Hold on.

1 **(Pause)**

2 Q Plaintiffs' 1880, page 17, Casey Family Programs, April
3 20, '14, page 17, Additional Data Summary, Work Force
4 Information.

5 "According to child welfare expert Jess" - do you
6 remember reading this now, Commissioner?

7 A Yes.

8 Q Okay. The quote "The single most important improvement
9 any system can make is to ensure that it has a well trained
10 workforce."

11 You agree with that, don't you?

12 A I agree with that.

13 Q "With workloads that meet national standards."

14 Do you agree with that?

15 A No, I don't agree with that.

16 Q Okay. "Without a solid and professional workforce, the
17 child protection system will never improve; that is an absolute
18 rock solid guarantee."

19 A I absolutely need a solid professional workforce.

20 Q So -- so here we have Texas Appleseed saying adopt
21 national standards on caseloads. You have the Casey Family
22 Program saying adopt national standards on workloads. True?

23 A I'm not sure. This is a footnote or something in this
24 report. This is not a recommendation from them.

25 Q This is the body of the report. This is page 17 of the

1 report.

2 **THE COURT:** It's a bullet point. I think they just
3 blew it up.

4 **THE WITNESS:** Yeah.

5 **THE COURT:** You want to hold it up?

6 **THE WITNESS:** It's additional data summary workforce
7 information. I don't know if that's in the body of the report
8 or in a footnote, I just don't know.

9 **MR. YETTER:** It's on page 16 of the report.

10 **THE COURT:** Just hold it up, point it out.

11 **THE WITNESS:** If you could just --

12 **MR. YETTER:** Right there.

13 **THE COURT:** That's the body of the report.

14 **THE WITNESS:** Okay, okay.

15 **THE COURT:** He's just for the -- for the record, he
16 just held up -- Mr. Yetter has held up the page with that
17 paragraph in the middle of the page in the body, not in a
18 footnote.

19 **THE WITNESS:** Okay.

20 **MR. YETTER:** Okay. A couple of more things before we
21 finish.

22 Q You agree that high caseloads could -- I'm saying "could"
23 because that's what you said -- have an effect on children,
24 right?

25 A Mr. Yetter, I think I said high workloads rather than high

1 caseloads.

2 Q Fair enough. You agree that conservatorship caseworkers
3 with high workloads could have a bad effect on children, true?

4 A I think I said that.

5 Q You also said that what you really believe is that the
6 consequence is more to the worker because the workers work more
7 overtime, right?

8 A And where did I say that?

9 Q In your deposition, page 152, lines 1 through 20.

10 A May I see it, please?

11 Q Certainly. Page 152, lines 1 through 20. So, okay, well,
12 it's really actually not the whole part. You can read the
13 whole thing but I'm actually looking more at lines 15 through
14 20 -- through 21.

15 Do you think their high caseloads --

16 A Please let me read it and then I'll answer your question.

17 Q Sure, yes.

18 **(Pause)**

19 A Yeah, I said that.

20 Q Okay.

21 A I said --

22 Q Two -- two things. Let me just verify them. High
23 caseloads can have a -- could have a consequence, a bad
24 consequence to children, true?

25 A I said it could.

1 Q Okay. Second, but you really believe that the bad
2 consequences is more to the caseworker because the workers work
3 more overtime, true?

4 A You know that is true.

5 Q And then --

6 A I think -- I think workers are incredible. I think they
7 will sacrifice their family before they -- my workers are
8 pretty incredible.

9 Q No one in this trial is criticizing the good faith of your
10 conservatorship caseworkers.

11 A And I appreciate that and I have a lot of faith in my
12 workers.

13 Q It is also true, at least you agree, Commissioner, that
14 lower workloads will help you retain your good caseworkers,
15 conservatorship caseworkers, true?

16 A The appropriate workload spread out among the workers in a
17 unit and in a PD's unit will help me keep workers. They need
18 to feel like they're being treated fairly. If they have two
19 really hard cases; that's all they need. If they have twenty
20 really easy cases they can even help the other person. It's
21 how -- they have to feel that they're treated fairly.

22 Q What really concerns you -- last question, your Honor, or
23 last brief topic -- what really concerns you are children that
24 are in the system of the -- of the foster care system of our
25 state for more than two years, right?

1 A There's a lot of things that concern me. I think the
2 children that are not in the permanent adoptive home and have
3 been in the state's custody for two years, that's something we
4 need to be paying some attention to.

5 Q Because you're concerned about children who have been in
6 care more than two years because it becomes harder to achieve
7 permanency the longer a child is in foster care, true?

8 A Yes.

9 Q Okay. One last exhibit, Plaintiffs' 567.

10 Did you realize, Commissioner, for these children
11 that have been in the state's custody for more than two years
12 that over 56 percent of the PMC children fall in that category?
13 Did you realize that?

14 A I've probably seen that statistic.

15 Q Plaintiffs' 567. Okay. Here is -- here is -- this comes
16 from the state, it's as of this summer, July 7th, 2014. There
17 is a column -- this is all PMC. See at the bottom you see "PMC
18 Total" on the far left hand -- there you go, let's put that in
19 highlight -- and then you see "Time in Care" and it goes --
20 whether it's one year, one and a half years, two years, and it
21 goes all the way down.

22 Do you see that, Commissioner?

23 A No, I'm having trouble seeing it, I apologize.

24 Q Okay. The far left column. Let's highlight the time in
25 care, top of the time in care, just that -- there you go.

1 Okay. That shows the years.

2 A Yes. That's average number of placements for children in
3 conservatorship, yeah, got it.

4 Q Okay. So we're dividing children by the years in the
5 custody and the number of placements that they have but I'm
6 looking specifically about those poor children that have been
7 in custody for than two years and I want to highlight every --

8 A Okay. Where -- that I don't -- that I don't know where
9 you are.

10 Q Everything from two years down. Do you see the total of
11 the children just from two years down, 2641 down?

12 A Okay.

13 Q No, no, 2641, there you go.

14 A Yeah.

15 Q Okay. That group of children have been in custody for two
16 years or more. That's the group that you have told us that
17 really concern you because it's harder to achieve permanency
18 the longer a child is in foster care, right?

19 A It depends on where they're placed.

20 Q Well, Commissioner, that's not what you said in your
21 deposition.

22 A Well, show me what said in my deposition.

23 Q Okay. Let's go -- let's finish this document.

24 Of all the children in PMC, all 11,700 as of July,
25 I've added these up, 6,590 have been in the system for two

1 years or more; that's 56.2 percent.

2 A Okay.

3 Q Does that surprise you, Commissioner?

4 A I don't think it surprises me if it's numerical.

5 **MR. YETTER:** Thank you. Pass the witness, your
6 Honor.

7 (Requested transcription concluded at 12:01:46 p.m.;
8 proceeding continued)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

January 10, 2015

TONI HUDSON, TRANSCRIBER